



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

Regulatory Division

PUBLIC NOTICE **JUN 5 2004**

Efficient Transportation Decision Making (ETDM) Process

TO WHOM IT MAY CONCERN. This district is considering whether to accept funds from the Florida Department of Transportation (FDOT) to provide services to improve the efficiency of processing FDOT's applications for Department of the Army permits. The permits would be those pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344.) The purpose of this public notice is to describe and solicit comments on procedures designed to ensure funds would not impact impartial decision-making. The funds would expedite the exchange of concerns and information between the Corps, FDOT and other agencies, including initiation of such dialogs prior to the submission of the application. This early and continuing dialog is expected to enable FDOT to incorporate these concerns in the project design and application submittals. Under the current process, the FDOT generally only learns of concerns or questions after submission of the application, resulting in a delay while information is developed and exchanged and in some cases the proposed project redesigned/modified. Under the Efficient Transportation Decision Making (ETDM) process, the Corps would be obtaining information early in the FDOT process and prior to FDOT's submission of an application. After submittal of the application (and, when applicable, the end of the public notice comment period) it is expected that this early involvement would result in fewer requests for additional information then under the current process thereby shortening the time between application and the permit decision. The funds will also provide for additional tasks that would facilitate the analysis of the proposed project. The permit decision itself would not be affected by the funds and this new process. The Corps' decision whether to issue or deny the permit is and would continue to be based on the analysis of the proposed project, FDOT's submittals, comments from the public and other information.

AUTHORITY. The Transportation Equity Act for the 21st Century (TEA-21), June 1998, authorized development of Environmental Streamlining. Florida was selected as a pilot state in the Fall of 1999. Twenty-four agencies agreed by Memorandum of Understanding, signed December 2001, to endorse and implement Florida's ETDM process.

The Water Resources Development Act of 2000 (Public Law 106-541) was signed into law on December 11, 2000. Section 214(a) reads as follows:

(a) IN GENERAL. In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army."

(b) EFFECT ON PERMITTING. In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally."

The Energy and Water Appropriations Bill, H2754 (Public Law 108-137), signed into law on December 1, 2003, states: "Section 114. Section 214(a) of Public Law 106-541 is amended by striking "2003" and inserting "2005".

The Secretary of the Army has delegated this responsibility to the Chief of Engineers and his authorized representatives, including the Commander of the Jacksonville District.

NON-FEDERAL PUBLIC ENTITY PROVIDING FUNDS. Florida Department of Transportation, 605 Suwannee Street, Tallahassee, Florida 32399.

REASON FOR PROVIDING THE FUNDS. To reimburse Corps for performing tasks to implement the Efficient Transportation Decision Making (ETDM) process. ETDM consists of three phases. The Planning phase occurs when the Metropolitan Planning Organizations (MPOs) develop their Long Range Transportation Needs Plan (every 3 to 5 years) and when the FDOT develops the Cost Feasible Plan for the Federal Interstate Highway System (FIHS.) The Programming phase occurs annually when projects are added to FDOT's Five-Year Work Program and during development of the FIHS Ten-Year Plan. The Project Development phase occurs when FDOT is preparing the design and environmental documentation. The Corps would assign employees to participate as members of multi-agency Environmental Technical Advisory Teams (ETATs.) ETATs would submit and coordinate comments at the Planning and Programming phases of each transportation project and would provide input and assistance during the Project Development phase.

HOW ACCEPTANCE OF FUNDS WOULD EXPEDITE THE PERMIT REVIEW PROCESS.

In the Planning phase, the ETATs comments and information provided very early in the planning process would enable planners to adjust project concepts to avoid or minimize adverse impacts and to identify mitigation alternatives and costs. In the Programming phase, the ETATs comments would, among other things, assist the FDOT in scoping (budget and time) the technical studies necessary for the review of the application for a permit for the project. During the Project Development phase, the ETATs would assist FDOT in compliance with the various regulatory requirements so that any resultant approvals are acceptable to all parties and received concurrently.

WHAT ACTIVITIES THE FUNDS WOULD BE EXPENDED ON. For the Planning and Programming phases, funds would reimburse for the ETAT member's time to review information and provide comments using an interactive ETDM Web site, for time spent coordinating and exchanging information with other ETAT members, and in some cases including site visits and meetings with the FDOT and others. For the Project Development phase, activities would include, but not limited to: technical writing; site visits; copying; coordination activities; review of application submittals; drawings corrections; jurisdictional determinations; public notice preparation; preparation of correspondence; preparation of draft decision documents; and meetings with the applicant. Funds would not be expended for review of project managers' work by supervisors, other elements of the Corps, or other persons in the decision-making chain of command. No enforcement or compliance activities would be paid from the augmenting funds.

Comments and input envisioned to be provided by the Corps include the following. For the Planning phase: review, comment and accept the project's Purpose and Need statement; review, comment and accept logical termini; review, comment and accept mode choice and mobility alternatives; review and comment on order of magnitude of impact; identify agency plans and programs that affect the project area; identify need for future agency involvement and anticipated agency coordination and consultation; identify resource management and recommended course of action to preserve and protect resources; evaluate potential secondary and cumulative impacts; and provide project recommendations. For the Programming phase: review and comment under the Intergovernmental Coordination and Review information; becoming Cooperating Agency if EIS; agree on adequacy of corridor-wide resource inventory; review and comment on project impacts, number and quality of wetlands, historic sites and

protected species information; review and comment on Class of Action; determine if Department of the Army Permit required; initiate agency analysis of project concepts and possible typical sections; identify all permitability issues and general mitigation required based on the statutory responsibility of the Corps; perform project scoping activities based on review of Geographic Information System (GIS) databases and project information and identify required technical studies prior to beginning the project development phase; review and comment on summary of community issues and public concerns; review and comment on bridge replacement projects; participate at Corps discretion in dispute resolution, if necessary, to assist the FDOT's ETDM coordinator in identifying solutions to project concerns; and participate in ETAT review committee, as needed, to review and resolve conflicts at an informal level. For the Project Development phase: participate in the development of specific alternative alignments, including no action; accept alternatives under consideration; rank alternatives according to the avoidance aspects of the Section 404(b)(1) Guidelines; accept jurisdictional boundaries; establish concurrent NEPA/Permit review process; review and comment on specific technical reports related to National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act; review and comment on Environmental Assessments/Draft Environmental Impact Statement (EA/DEIS); review and comment on EA/DEIS with Section 404 capability for each alternative; coordinate with U.S. Fish and Wildlife Service and National Marine Fisheries Service if formal Section 7 Endangered Species Act needed; review permit application and issue formal public notice; attend joint public hearing and participate as necessary or conduct simultaneous public hearing for obtaining concurrent permits/NEPA approval and/or issue formal public notice; provide technical assistance on public hearing topics to satisfy permitting requirements; and review and comment on design modifications.

PROCEDURES TO ENSURE THAT THE FUNDS WOULD NOT IMPACT IMPARTIAL DECISION-MAKING.

All final permit decisions for cases where these funds are used would be reviewed by at least one level above the decision maker, unless the decision maker is the Commander of the Jacksonville District. For example, the ETAT member may prepare the recommendation for the decision, his or her Section Chief may make the decision, but then the decision would be reviewed by the Branch Chief.

All final permit decisions for cases where these funds are used would be made available on the Jacksonville District Regulatory web page.

The Corps would not eliminate any procedures or decisions that would otherwise be required for that type of project and permit application under consideration.

The Corps would comply with all applicable laws and regulations.

Funds would only be expended to expedite the final decision on the permit application. Funds would not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps Regulatory Program employees, before the decision is made.

IMPACTS ON JACKSONVILLE DISTRICT'S REGULATORY PROGRAM AND PERMIT EVALUATIONS NOT SUBSIDIZED BY FUNDS CONTRIBUTED BY FDOT. The employees and other costs of Jacksonville District's Regulatory Program are funded through the annual Energy and Water Appropriation. Some employees would now be spending some of their time on these additional ETDM tasks. FDOT funds would pay for the employee costs based on the hours expended and other costs. The funds from the Energy and Water Appropriation previously funding these employees would instead be used to hire additional. No impacts on other parts of the program or other applicants are expected. If the FDOT funds are expended or are not renewed, their remaining permit applications would be handled like those of any other applicant.

COMMENTS. Comments are welcomed. Following the review of comments received in response to the public notice, the Commander of the Jacksonville District will determine whether or not acceptance and expenditure of the funds as described above is (1) in compliance with Section 214 of the Water Resources Development Act (as amended) and (2) the public interest is better served through cost-effectiveness, enhanced evaluation capability, streamlined permit processing, or other appropriate justification. A final public notice will be issued regarding the District Commander's decision. If determination is made to accept the funds and if in the future FDOT provides additional funding then no new public notice would be issued provided that the purpose remains the same.

Please provide comments in writing to the Commander at the above address within 30 days from the date of this notice.

If you have any questions, you may contact Bob Barron of this office either by letter, by telephone at 904-232-2203, by e-mail at robert.b.barron@saj02.usace.army.mil, or by fax at 904-232-1684.

A handwritten signature in black ink, appearing to read "John R. Hall".

for John R. Hall
Chief, Regulatory Division